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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 364

(Decided October 21, 1968)

MARY LEE LAKE AND LEWIS W. LAKE,
HER HUSBAND, PLAINTIFFS BELOW,
Appellants,

v.

POTOMAC LIGHT AND POWER COMPANY,
DEFENDANT BELOW,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MOTION FOR RECONSIDERATION OF DISMISSAL OF APPELLANTS' APPEAL

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The Daily Record Co., Baltimore, Md. 21203

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To the Chief Justice and Associate
Justices of said Court:

The appellants say they are aggrieved and damaged by the Court's dismissal of their appeal, which the plaintiffs say is from a judgment that violates the 5th and 14th Amendments to the Constitution. That the judgment of this court deprives them of their land and its use without

just compensation, due process of law and equal protection of the law.

The case is for trespass and the appellants ask the Court to note carefully that the appellee by the sworn testimony of all of its witnesses and the stipulation of its counsel admit that the appellants refused to grant the appellee permission to erect its equipment on their land. That appellee disregarded this refusal and placed its equipment on their property, in 1937 and have maintained it there ever since, and that appellee has never been given consent to be there and refuses to remove its equipment, which is still there. Yet this Honorable Court dismissed the appeal for want of jurisdiction, October 21, 1968.

The appellants say that the Constitution was never drawn with the intent that it should be an instrument for a search for discovery of technical interpretations or forms to expand or contract what it literally says or means to people of rational minds of the times.

Referring to the 5th and 14th Amendments:

Can private property be taken against one's will without just compensation, due process, or equal protection of the law when the person so taking admits he is doing so against the owner's will, and can the court under such admitted facts enter a judgment in favor of the defendant that it is not trespassing on plaintiffs' land?

Have the appellants had due process of law, equal protection of the law or just compensation. These are protections the constitution provide and are protections this court has often assured, are guarantees to the public. The appellants feel your Honors' judgment of October 21, 1968 is a departure from the Court's "time old assurance", when I say this I do so unequivocally because the court will note

that the defendant without question or excuse admits the trespass and brazenly asserts it refuses to remove its property from the plaintiffs' land.

I am not willing to believe that technicalities are going to be dignified with the power to subordinate the clear wording of the constitution, that is stated to be the supreme law of the land.

It was the intention of the appellants that the appeal was taken under Rule 10, 1967, of this Court, which the appellants followed very carefully.

The Constitution of the United States, Article 3, Section 2 states: "The judicial power shall extend to all cases of law and equity under the conditions of the laws of the United States. In all other cases the Supreme Court shall have appellate jurisdiction both as to law and equity * * *" 28 U.S.C. 1257(2).

It appears to me, a member of the bar of this court since March 1915, possibly the senior living member, that the 5th and 14th amendments to the vast majority of persons are the most important of any of its sections.

The 5th and 14th Amendments. No person shall be deprived of life, liberty, or property without due process of law and equal protection of the law and just compensation, that it is susceptible of no meaning other than what it says for it is complete with no ifs or ands or exceptions.

The above number case states a clear violation of these provisions, and the judgment of the Supreme Court of Appeals of West Virginia, certainly to that point deprived the plaintiffs of the protection of those sections.

The case is for trespass, directly covered by these sections. The defendant by its officers and witnesses admitted the plaintiff owns the land and that appellee's equipment

was placed on appellants' land against their will and the appellees have maintained their equipment there ever since and refused to remove it.

All of this is cited in the Jurisdictional Statement, quoted in the witnesses own sworn words (I omit the plaintiffs' testimony as the defendant's testimony admits the plaintiffs' case.), yet the court permitted the defendant's prayers instructing the jury if they find the state owned a 40 foot right of way and the defendant's equipment was on it, their verdict must be for the defendant, although the judge told the defendant's attorney and the jury a number of times, during the hearing, "There is no evidence before this court or jury of any title in that land but the Lakes", and "there is no evidence that the state, town, or defendant have any title to that land".

The plaintiffs ask the trial court for an instructed verdict for the plaintiffs, which the court denied. The jury's verdict was that the defendant was not trespassing on the plaintiffs' land, and the court entered judgment for the defendant to that effect.

The Supreme Court of Appeals of West Virginia refused the plaintiffs' appeal from the judgment, from its judgment an appeal was taken to this court. Your Honors, per curiam, said the court has no jurisdiction and dismissed the appeal.

The chronology of the judgment of the lower court was the timely appeal to the Supreme Court of Appeals of West Virginia. Pending action on the appeal, plaintiffs filed a supplemental brief. The court denied the appeal, the plaintiffs filed a petition requesting the lower court to review its order refusing the appeal which it refused, saying it was filed too late, not within 8 months of date of judgment, from which this appeal is taken.

The plaintiffs ask that the appeal be from all 3 judgments, separately and collectively but especially from that of March 4, 1968, the final judgment of the state courts which the appellants say confirm the judgment of the trial court.

Rule 8 of October 8, 1967 of this court concerning disbarment of impropriety of members of the bar of this court affording them 40 days within which to deny or show a defense, in its absence the suspension is made permanent, which could only be based on the conclusion that the accused could not deny the charge as true or that he had no excuse to offer.

The plaintiffs feel there is no distinction in the reasoning in that case and the present case, the charges in which the appellee have not appeared in person or by counsel, either in the state court of appeals or this court, reasoning that they could not deny their sworn testimony admitting the trespass, which is a confirmation of its truth, which was a clear violation of the 5th and 14th Amendments to the Constitution.

If Your Honors should deny this, have the plaintiffs been denied the protection of the constitutional guarantees and that title does not pass to property until just compensation has been paid. If Your Honors say this is still the law, the plaintiffs ask that you apply it, not by their request but in consequence of the defendant's sworn admission.

The plaintiffs say they believe the final judgment in the state court was the refusal of the Supreme Court of West Virginia to review its refusal to grant an appeal from the trial court.

It would be difficult for any citizen of the United States to conclude that the 5th and 14th Amendments were not a way of life to them in the pursuit of happiness, if a stranger

was to come on your property and occupy part of your land for his private use, against your protest, clearly a violation of the Constitution where could you turn for protection but to the Constitution. Is not the Supreme Court of the United States the protector of the rights of its citizens when their rights are violated? Every rule in the book confirms this. The Constitution is the supreme law of the land, and all laws shall be made pursuant to it.

How can there be any greater or stronger proof of a wrong than the defendant's own admission of the fact complained of?

The defendant in this case admitted to its own counsel's questions that it had seized and held the plaintiffs' land since 1937 and refused to give it up.

At the conclusion of the evidence the judge of the lower court deliberately refused to live up to his solemn rulings, given well over a dozen times and then permitted opposing counsel to violate his own stipulation that the plaintiffs owned the property by trying to prove that the State Road had a right of way extending 13 feet over the plaintiffs' land, the State road was only 14 feet wide yet he at every turn to ask his witnesses, the State had a 40 foot right of way, how wide was the State's right of way, how wide was the State's right of way in front of Lake property, the plaintiff objected to this but the court simply said it doesn't prove or disprove title and refused to strike it out, and in the defendant's prayers he submitted "if the jury found the state had a 40 foot right of way in front of plaintiffs' land and the defendant had its equipment on it their verdict should be for the defendant that it was not trespassing on plaintiffs' land yet in this case the Supreme Court of Appeals of West Virginia said in this case on the first appeal: "* * * the state road survey of 1929 showed Hardy

7

Winchester pike to be 14 feet in width, there is no record of any proceedings by which the state road acquired a larger right-of-way, 150 W. Va. 641, yet, the trial judge brushed these aside, his own statements and the court of appeals rulings, the verdict of the jury and the judgment extended on the verdict was in line with the prayers of defendant although he said, *supra*, there is no evidence of any title to that land in the state, the town or the defendant." The sworn evidence (quoted, word for word) is in the jurisdictional statement, and the petition for appeal to the Court of Appeals of W. Va. Not a word of defense or denial has been presented to this Honorable Court, this silence is evidence that the defendant has no defense. This Court is the final resort of the people for the protection the U. S. Constitution affords and which has been brazenly defied.

The appellants ask your Honors to reconsider your dismissal of this appeal and exercise your prerogative and order the lower court to enter a judgment for the appellants,

And as in duty bound.

LEWIS W. LAKE,

Wardensville, West Virginia 26851,

For Appellants.